



WASHINGTON, DC

STEPHEN E. CORAN
202.416.6744
SCORAN@LERMANSENTER.COM

December 19, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

**Re: Agile Network Builders, LLC
FRN 0020449831
Rural Broadband Experiment Application
WC Docket No. 10-90
REQUEST FOR WAIVER**

Dear Ms. Dortch:

On behalf of Agile Network Builders, LLC ("Agile"), attached hereto is Agile's Request for Waiver ("Waiver Request") of certain technology description requirements described in the Commission's *Report and Order* implementing the Rural Broadband Experiment program.¹ The Waiver Request is submitted in accordance with the procedures explained in the Commission's *Public Notice* provisionally selecting Agile's application for rural broadband experiment funding to provide fixed broadband services to 687 census blocks in Ohio.² The Waiver Request with the referenced attachments also is being submitted electronically as an attachment to Agile's Form 5620.

Please contact undersigned counsel to Agile if there are any questions concerning this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stephen E. Coran', is written over a horizontal line.

Stephen E. Coran

¹ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) ("*Report and Order*").

² See *Public Notice*, DA 14-1772 (rel. Dec. 5, 2014) ("*Public Notice*").

Agile Network Builders, LLC
Rural Broadband Experiment Application
Request for Waiver of Professional Engineer Certified Network Diagram

Agile Network Builders, LLC (“Agile”) hereby seeks a waiver of the requirement that winning bidders for rural broadband experiment funds provide a technology and system design, including a network diagram, certified by a Professional Engineer (PE). In lieu of the PE certified network diagram, required by the *Report and Order*¹ to be submitted by December 19, 2014, Agile is submitting a detailed network diagram, and an explanation of current and future networks in the technology description document. Accordingly, the Commission should find that Agile is technically qualified and approve its request for waiver.

Background

By *Public Notice* dated December 5, 2014, the Wireline Competition Bureau (“Bureau”) provisionally selected Agile’s application for Category Two Rural Broadband Experiment funding.² Subject to submission of additional information and a final determination of Agile’s technical qualifications, Agile will receive funds for construction and operation of fixed broadband services to designated census blocks in Ohio.

Agile is a telecommunications company based out of Canton, Ohio. Agile’s management is experienced in constructing, deploying, marketing and operating fixed broadband network services.

Technical Qualifications

In the *Report and Order* adopting requirements for the rural broadband experiment program, the Commission stated that winning bidders must “submit a description of the technology and system design used to deliver voice and broadband service, including a network diagram, which must be certified by a professional engineer.”³

At this time, due to the lack of a properly educated and experienced Professional Engineer in rural fixed wireless topology, Agile does not have a technical and system design that has been certified by a Professional Engineer. However, the Technology Description has been reviewed and approved by Donald Thinschmidt, a General Radiotelephone Operator Licensee. Agile has experience in working with Mr. Klinschmidt on wireless projects, and has found him to be extremely capable, professional and exacting in his standards. Agile is providing Mr. Thinschmidt’s statement and a copy of his License along with the Technology Description. Agile intends to supplement its application with a certification signed by a Professional Engineer in the near future.

¹ *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (“*Report and Order*”).

² See *Public Notice*, DA 14-1772 (rel. Dec. 5, 2014) (“*Public Notice*”).

³ *Report and Order* at 8786-87 (¶ 54). See also *Public Notice* at 2.

The public interest supports waiver of the requirement that Agile provide a Professional Engineer certification. This requirement is intended to be an indicator that the winning bidder will be able to meet the requirements set forth in the *Report and Order* for the funded service area. Agile has extensive experience in deploying rural broadband in the State of Ohio. Its leadership has paved the way for many public-private partnerships and have connected thousands of end users to reliable affordable broadband over the years. Currently, Agile is the sole provider of backhaul services for the State of Ohio Multi-Agency Radio Communications System (MARCS). The engineering required to ensure proper operation of the MARCS system has been leveraged into Agile's Rural Broadband Experiment application to ensure success.

Agile has been extremely diligent in its efforts and is committed to moving forward with its plans for the betterment of unserved Americans in rural Ohio. Agile has attempted to find a Professional Engineer with experience in rural wireless engineering to analyze and approve its technology description with no success. In lieu of engaging a Professional Engineer without adequate knowledge of wireless networks, Agile engaged Mr. Thinschmidt, whom it knows to be competent in the filed.

The technology being used in Agile's application is globally deployed and supported for the delivery of the services required. Agile thus has a firm understanding of the program requirements.

Given Mr. Thinschmidt's review and approval, Agile's significant expertise in building wireless networks and the significant steps that Agile has taken, it would contravene the public interest in expediting the provision of voice and broadband to underserved locations in the designated census blocks, if the Commission were to find Agile technically unqualified at this time. To the contrary, expeditiously granting the waiver request will facilitate Agile's ability to move forward with its plans.

Finally, grant of the requested waiver would be consistent with prior holdings. For example, in *Armstrong Telephone Co.*, Commission staff reinstated and granted an application that did not strictly comply with Commission rules requiring cellular applicants to include a firm financial commitment in their applications.⁴ In upholding a Bureau decision, the Commission noted that "[t]he Bureau weighed the public interest concern of expeditiously providing service to the public against strict application of its rule and concluded it was *in the public interest* to grant the application"⁵ (emphasis supplied). Recently, the Commission granted a waiver of its former defaulter rule to encourage "*broad, robust participation* in Auction 97, while continuing to ensure that auction bidders are financially reliable."⁶ The Commission also waived its attributable material relationship rules in light of "broader policy objectives" that included the participation of small entities in competitive bidding.⁷ These examples demonstrate that policy objectives such as the expeditious provision of service and increased participation by small

⁴ See *Armstrong Telephone Co.*, 3 FCC Rcd 1665 (1988).

⁵ *Id.* at 1666.

⁶ See *Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver*, FCC 14-130 (rel. Aug. 29, 2014), at ¶ 21 (emphasis supplied).

⁷ See *Grain Management, LLC's Request for Clarification or Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules*, FCC 14-103 (rel. July 23, 2014), at ¶ 14.

businesses can override restrictive requirements related to an applicant's qualifications. The Commission should apply these same principles here in considering and granting this Waiver Request.

Based on the foregoing, Agile respectfully submits that it has justified a waiver to provide the Professional Engineer certification for the Technology Description.